IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2551 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MINOR DIPAK MANSI & 7 - Appellant(s)
Versus
DRIVER KOLI ARJAN KARSHAN CHUDASAMA & 2 - Defendant(s)

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Appearance :

MR SANDEEP N BHATT for Appellant(s) : 1 - 2.None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
NOTICE SERVED for Defendant(s) : 1 - 2.
MR NAGESH C SOOD for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 10/05/2007

ORAL JUDGMENT

1. The short facts of the case are that the

deceased Mansi Sardar and Shamjibhai Desabhai, both, were going on bicycle on 1.1.1990 from Veraval to Dari and at that time, one motor car bearing No.GUW 9256 being driven in a rash and negligent manner, dashed with the bicycle and as a result thereof, Shamjibhai sustained injuries, but Mansibhai sustained injuries and thereafter succumbed to injuries. The aforesaid accident resulted into two Claim Petitions; one being MACP No.414 of 1990 preferred by the injured Shamjibhai which is not the subject matter of the present appeal. The another MACP No.371 of 1990 preferred by the legal heirs of the deceased Mansibhai; wife, six children, father and the mother for the compensation of Rs.7 lac. The Tribunal adjudicated the matter and awarded compensation of Rs.84,000/- with the interest at the rate of 15% and it is under these circumstances the present appeal for enhancement by the claimant before this Court.

2. Heard Mr.Bhatt, learned Counsel for the appellants and Mr.Sood, learned Counsel for the respondent No.3 Insurance Company. Notice was

served to Respondents No.1 and 2, but nobody has appeared on their behalf. Considered the record and proceedings of the Tribunal.

3. It may be recorded that pending the proceedings before the Tribunal father Savdas Parbat had expired and such a declaration was made. The Tribunal assessed the income of Rs.600/- per month and considered the dependency benefits of Rs.400/- per month and accordingly ordered for Rs.72,000/- as the compensation and Rs.10,000/- towards loss of life and Rs.2,000/- towards funeral expenses and, therefore, total Rs.84,000/-.

4. As per the contention of the appellants, the certificate was produced for the income of Rs.1,000/- per month as the salary and additional amount of Rs.1,500/- towards part-time labour contract and total Rs.2,500/- per month and, therefore, it has been submitted on behalf of the appellant that the Tribunal ought not to have discarded the said evidence and, therefore, there is an error committed by the Tribunal.

5. In my view, the certificate for regular income of Rs.1,500/-, so far as the labour contract is concerned, was not pertaining to the company which had issued the certificate for salary. In any case, if the salary of Rs.1,000/- is considered with some additional income and keeping in view the scheme of the Act for considering the matter for award of compensation in case where the person having no income as notional income of Rs.15,000/- per annum, it was required for the Tribunal to assess proper income and considering the facts and circumstances it could have been assessed of Rs.15,000/- per annum i.e. Rs.1,250/- per month. As per the settled legal position the prospective income of the person concerned is required to be considered. The reference may be made to the decision of this Court in the case of **"Yasin Abdulsatar Kazi v. Mangalsinh Natvarsinh Jadeja & Ors."**, in First Appeal No.6500 of 1998 decided on 1.5.2007. Therefore, if prospective income is considered by doubling and dividing by one half, it would be Rs.1,875/-

per month. Out of the said income, 1/3rd amount is to be excluded for the expenses for himself by the deceased and the dependency benefits can be considered of 2/3rds of the amount, which would come to roughly Rs.1,250/-. The Tribunal has rightly applied the multiplier of 15 and, therefore, if such multiplier is applied to the dependency benefits of Rs.15,000/- per year, the total amount would come to Rs.2,25,000/- out of which Rs.72,000/- is already awarded by the Tribunal, hence, the difference would be of Rs.1,53,000/-, which the Tribunal ought to have awarded as compensation and since not awarded, the claimants would be entitled to such additional compensation.

6. Mr.Bhatt, learned Counsel for the appellants, submitted that the interest at the rate of 15% is rightly awarded by the Tribunal and, therefore, in the present enhancement appeal, the same rate of interest may be awarded, whereas Mr.Sood, learned Counsel for the respondent No.3 Insurance Company submitted that the amount of interest is on a very higher side

awarded by the Tribunal.

7. In any case, the interest already awarded by the Tribunal is not under challenge to the extent of compensation already ordered of Rs.84,000/-. So far as the present enhancement appeal or additional compensation is concerned, I find that it would be just and proper to award the interest at the rate of 9% per annum.

8. Mr.Bhatt, learned Counsel appearing for the appellant also contended that the amount of Rs.10,000/- towards loss of life and amount of Rs.2,000/- towards funeral expenses are on lower side. Considering the facts and circumstances, I find that the said amount cannot be said on lower side as sought to be canvassed, more particularly in view of the additional compensation already observed and to be awarded by this Court in the present appeal.

9. In view of the aforesaid observations, it is hereby observed and directed that the appellants would be entitled to the additional compensation of Rs.1,53,000/- with the interest at the rate of 9% per annum from the date of Claim Petition

till the amount is actually realised by the claimants and also the additional proportionate cost of the present appeal. It is further observed and directed that the aforesaid amount shall be deposited by Respondent No.3 Insurance Company within three months from the date of receipt of the order and out of the said amount, and out of the said amount, 20% shall be disbursed to the claimants and 80% of the amount shall be invested with the nationalised Bank for a period of five years with the clause that the claimants shall not be entitled to raise any loan over such investment, but shall be entitled to the interest periodically as and when it becomes due. After the expiry of the period of such investment, the claimants shall be entitled to receive the amount of investment.

10. The appeal is partly allowed to the aforesaid extent. Decree accordingly. Record and proceedings be returned to the Tribunal.

10.5.2007 **(Jayant Patel, J.)**

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